Treaties — Interpretation of — Multilingual Text.

War Crimes — As Distinguished from Crimes against Humanity — Murder of Civilians — Ill-treatment — Article 46 of the Hague Regulations of 1907 — Article 6 (b) and (c) of the Charter of the Nuremberg International Military Tribunal — Multilingual Text — Principle of Interpretation in Case of Conflict — Crimes against Humanity.

Case No. 141

# IN RE AHLBRECHT (NO. 2).

*Holland, Special Criminal Court, Arnhem.*

*September* 22 1948

*Special Court of Cassation.*

April 11 1949

THE FACTS.—This was the final trial[1] of Ahlbrecht, a member of the German Waffen S.S. (the military branch of the Security Service): (*a*) for having shot, deliberately and without due cause but also without premeditation, a person in custody; and (*b*) for having ill-treated a number of prisoners in the custody of the Security Service. He was found guilty of war crimes and crimes against humanity. He appealed.

*Held* (by the Special Court of Cassation): that the accused was guilty of committing war crimes under Article 6 (*b*), but not of crimes against humanity under Article 6 (*c*), of the Charter of the International Military Tribunal. The Court said:

"The term 'murder' is reproduced in the official Dutch translation of the text of the Charter as 'moord', the term used in Article 289 of the Dutch Criminal Code to define a crime of which premeditation forms an essential part. The word used in the authentic French text of the Charter is 'assassinat', which equally seems to indicate a type of killing qualified by a special element of premeditation. The English text, however, uses the word 'murder', which, according to English common law, is a much broader concept requiring

[1] The original prosecution had led to the passing of the Law of July 10, 1947 (*Official Journal*, No. H 233) concerning the trial of war criminals in the Netherlands: see *Annual Digest*, 1947, Note to Case No. 92.

'malice aforethought' but (*vide* such writers as Russell, *On Crime*, and Kenny, *Outlines of Criminal Law*) is an expression which has in course of time been construed by English courts to cover all those types of criminal attitude of mind which were deemed sufficiently reprehensible to invoke the death penalty. Therefore the distinction between murder and manslaughter in English law by no means coincides with the distinction between 'meurtre' ('moord') and 'homicide' ('doodslag') in French, Belgian and Dutch law. Moreover, causing death inadvertently comprises manslaughter, contrary to the other systems of law quoted. On the other hand, while American law (*vide* such authors as Claude and Marshall, *Law of Crimes*, and May, *Law of Crimes*) accords in broad outline with English common law, in the majority of the States different grades of murder are distinguished, the death penalty being applicable only to murder in the first degree, *i.e.*, a wilful, deliberate and premeditated killing or a killing committed in the execution of especially grave crimes. The third authentic text of the Charter, the Russian, employs the term 'ubiystwo', a word which is colourless in the sense that it covers all forms of intentional killing: it can therefore only acquire the special meaning of 'premeditated killing' by the addition of an adjective. In case of such a contradiction between three equally authentic texts, that construction must be accepted which leads to the most reasonable results. Now it would be unreasonable if attacks on the lives of civilians in occupied territory should be termed war crimes only if they were premeditated, whilst ill-treatment and deportation of such civilians and ill-treatment of prisoners of war and sailors, equally set out in the terms of Article 6 (*b*), should be so termed in all cases." The Court therefore concluded, in the light also of Article 46 of the Hague Regulations of 1907, that the term murder must be construed in the broader sense of the Anglo-American and Russian legal terminology.

The ill-treatment of civilian prisoners came under the heading "ill treatment … of civilian population of, or in, occupied territory" in Article 6 (*b*) of the Charter of the International Military Tribunal (see Case No. 177), but not under crimes against humanity as set out in Article 6 (*c*). The latter term, in its obvious contradistinction to war crimes in the narrower sense and in the light of the Judgment of the International Military Tribunal at Nuremberg and decisions of other Allied military tribunals, must be construed in the limited sense of this term in the definition given by the United Nations War Crimes Commission, which the Tribunal adopted:

> "Isolated offences did not fall within the notion of crimes against humanity. As a rule systematic mass action, particularly if it was authoritative, was necessary to transform common crimes, punishable only under municipal law,

> into crimes against humanity which thus became also the concern of international law. Only crimes which, either by their magnitude and savagery, or by their large number or by the fact that a similar pattern was applied at different times and places, endangered the international community or shocked the conscience of mankind warranted intervention by States other than those on whose territory the crimes had been committed or whose subjects had become their victims."

Neither the isolated shooting of a prisoner nor the ill-treatment of individual prisoners was of such a character as to come within this definition.

[Report: N.J., 1949, No. 425, with a Note by Professor B. V. A. Röling.]

*16 ILR 396*